

File No. 08-CV-603 (DWF/AJB)

Plaintiff,

V.

CMI of Kentucky, Inc.,  
a Kentucky corporation,

Defendant,

and

Robert J. Bergstrom, Craig A. Zenobian,  
Shane M. Steffensen, and Christopher D.  
Jacobsen.

### Plaintiff-Intervenors.

**AFFIDAVIT OF WILLIAM A. MCNAB IN SUPPORT OF DEFENDANT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE  
ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

STATE OF MINNESOTA )  
 ) ss:  
COUNTY OF HENNEPIN )

William A. McNab, having been duly sworn upon oath, states as follows:

1. I am an attorney duly licensed to practice law in the State of Minnesota and admitted to practice before this Honorable Court. I am a shareholder with the law firm of Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis,

Minnesota 55402, and represent the Defendant in the above-captioned matter. I respectfully submit this affidavit upon personal knowledge.

2. Attached hereto as Exhibit 1 is true and correct copy of a December 10, 1996 letter from the State of Minnesota to CMI, Inc., requesting clarification regarding CMI's Proposal in response to the State's RFP.

3. Attached hereto as Exhibit 2 is a true and correct copy of CMI's December 11, 1996 Response to the State's Letter Requesting Clarification.

4. Attached hereto as Exhibit 3 is a true and correct copy of Amendment No. 4 to the State's and CMI's Contract No. 414329.

5. Attached hereto as Exhibit 4 is a true and correct copy of the State's Memorandum Opposing Petitioner's Motion for Additional Discovery in the matter captioned *Derheim v. Commissioner*, File No. 66-CV-07-3323, Rice County, Minnesota District Court.

6. Attached hereto as Exhibit 5 is a true and correct copy of the State's Memorandum Opposing Petitioner's Motion for Additional Discovery in the matter captioned *Zulpo v. Commissioner*, File No. 70-CV-08-5244, Scott County, Minnesota District Court.

7. Attached hereto as Exhibit 6 is a true and correct copy of page 22 of the State's RFP.

8. Attached hereto as Exhibit 7 is a true and correct copy of the State's January 2, 1997 Notification of Contract Award to CMI.

9. Attached hereto as Exhibit 8 is a true and correct copy of page 7 of the State's RFP.

10. Attached hereto as Exhibit 9 is a true and correct copy of CMI's Example Letter to Minnesota Litigants, submitted as Exhibit E to CMI's Proposal in response to the State's RFP.

11. Attached hereto as Exhibit 10 are a true and correct copies of CMI's required Confidentiality Agreement and Affidavit, submitted as Exhibit E to CMI's Proposal in Response to the State's RFP.

12. Attached hereto as Exhibit 11 is a true and correct of the Pricing Sheet submitted by CMI as part of its Proposal in response to the State's RFP.

13. Attached hereto as Exhibit 12 is a true and correct copy of page 3 of the State's RFP.

14. Attached hereto as Exhibit 13 is a true and correct copy of page 4 of the State's RFP.

15. Attached hereto as Exhibit 14 is a true and correct copy of page 5 of the State's RFP.

16. Attached hereto as Exhibit 15 is a true and correct copy of page 2 of the State's RFP.

17. Attached hereto as Exhibit 16 is a true and correct copy of Judge Gary Larson's October 17, 2007 Order Granting Motion for Additional Discovery in the matter captioned *Bergstrom v. Commissioner*, Court File No. 27-CV-07-8280, Hennepin County, Minnesota district court.

18. Attached hereto as Exhibit 17 is a true and correct copy of Judge Jean A. Davies' December 18, 2007 Order granting discovery relating to the source code for the "Minnesota model" of the Intoxilyzer 5000 in the matter captioned *Zenobian v. Commissioner*, Court File No. CV-07-1076, Carver County, Minnesota district court.

19. Attached hereto as Exhibit 18 is a true and correct copy of Judge Philip T. Kanning's December 4, 2007 Order granting Petitioner's motion for additional discovery in the matter captioned *Steffensen v. Commissioner*, Court File No. 10-CV-06-1036, Carver County, Minnesota district court.

20. Attached hereto as Exhibit 19 is are true and correct copies of pages 1-4 of the State's January 2, 1997 Contract Release to CMI.

FURTHER YOUR AFFIANT SAYETH NOT.

s/William A. McNab  
William A. McNab

Subscribed and sworn to before me  
this 17th day of April, 2009.

s/Linda Margot Magiera  
Linda M. Mageira  
NOTARY PUBLIC-MINNESOTA  
My Commission Expires January 31, 2014